



COUNCIL OF BETTER BUSINESS BUREAUS, INC.

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June 18, 2007

Mr. Donald S. Clark
Secretary of the Commission
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex S)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Endorsement Guides Review, Project No. P034520

Dear Mr. Clark:

The Council of Better Business Bureaus, Inc. ("CBBB") is pleased to provide comments on the *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 C.F.R. Part 255 ("Guides").

Background

The CBBB is the umbrella organization for 114 member Better Business Bureaus ("BBBs") throughout the United States. The BBB system sets and upholds high standards for ethical marketplace conduct and is a leader in advancing marketplace trust.

The BBB system provides experience reports on businesses, assists in the resolution of complaints filed by consumers against businesses, sets standards for charitable giving, and provides consumers and businesses with information to assist in making wise purchasing decisions.

BBBs also review local advertising and request local businesses to substantiate, modify or discontinue misleading advertising claims. Advertising disseminated on a national or broad regional basis is reviewed by the CBBB's national advertising programs – the National Advertising Division (NAD) (www.nadreview.org), the Children's Advertising Review Unit (CARU) (www.caru.org), and the National Advertising Review Board (NARB). Last year, BBBs and the CBBB's national advertising programs handled over 10,000 advertising review cases.

Complaints received by BBBs

In 2006, the BBB system received over one million complaints from consumers. More than 10,000 of those complaints were filed against companies that rely heavily on the use of consumer testimonials in advertising -- companies selling diet products, weight control programs, vitamins, food supplements, business opportunities and work-at-home plans. Advertising for these companies' products frequently includes consumer testimonials attesting to product efficacy or earnings that do not represent typical consumer experience, usually accompanied by a "results not typical" disclaimer. Most complaints to BBBs against these companies are seeking a refund after a disappointing experience with the product or service.

BBB experience with these types of complaints is consistent with the findings of the Hastak and Mazis studies -- consumers are influenced by consumer testimonials and frequently believe they will likely achieve similar results despite the presence of "results not typical" disclaimers.

Comments

(1) *Is there a continuing need for the Guides?*

Yes. BBBs and the CBBB's national advertising programs frequently rely on the Guides in evaluating challenged advertising. The BBB system also uses the Guides in promoting ethical business practices by advertisers. As the reach of advertising and use of consumer testimonials has expanded because of the Internet, the need for the Guides is even greater today than when they were originally issued. The Guides provide valuable guidance to advertisers, and greatly assist self-regulatory efforts aimed at ensuring truthful and accurate advertising.

We believe the Guides should be retained and that they would be even more useful if clarified or revised.

(2) *What changes, if any, should be made to the Guides to increase their benefits to consumers?*

The Guides currently permit advertisers to feature consumer endorsements that do not represent typical consumer experience as long as there is a clear and conspicuous disclosure that the results are not typical. There is no question that a consumer testimonial presents a powerful and appealing message to consumers, which is enhanced by use of multiple testimonials that frequently appear in many of the advertisements. Our experience is that the impression of typicality created by consumer testimonials is not offset by the use of disclaimers as permitted by the Guides, and that the advertised products or services will frequently not meet consumer expectations that have been formed as a result of the testimonials.

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We support changes to the Guides that would require unrepresentative consumer testimonials in advertising to be accompanied by clear and conspicuous disclosure describing the typical results obtained. This would provide a better way to get the message through to consumers as to what should be reasonably expected from the product or service. At the very least, the Guides should be changed to ensure that the "results not typical" disclosures actually change the net impression of the advertisement, which might be accomplished if they are clearer, more prominent, and more integrated with the advertisement.

The changes we support are consistent with the intent of the Guides as originally promulgated:

Advertisers should understand that the Commission strongly favors consumer endorsement that, in fact, depict a typical experience. However, the Commission recognizes that a consumer endorsement representing a non-typical experience with a clear disclaimer, or with a disclosure of what is typical may not be deceptive. Generally, a disclaimer alone probably will not be considered sufficient to dispel the representation that the experience is typical In any instance where only a disclaimer is made, however, the advertiser should be certain that it is as prominent as, and integrated with, the endorsement itself and that the circumstances surrounding the endorsement minimize the message that it is a typical experience. *Endorsements and Testimonials in Advertising; Promulgation of Final Guides Concerning Use*, 45 Fed. Reg. 3871 (1980).

Thank you for the opportunity to provide comments on the Guides. Please feel free to contact me if you have any questions about this.

Sincerely,

Alan L. Cohen
Vice President and General Counsel